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January 14, 1991

Opinion Committee
Open Government Section of
the Opinion Committee
Office of the Attorney General of Texas
Supreme Court Building
Austin, TX 78711-2548

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Opinion Committee

RE: Open Records Decision Request

Dear Committee Members:

We received the attached open record request from Guillermo Rangel. He has requested a copy of El Paso Police Department case #90-303255 regarding an assault on October 30, 1990. A copy of his request is attached, as well as a complete copy of the Police Department's records on this case.

We submit that all of the records on this case, or most of the records should be exempt from disclosure based on the exemptions provided in Sections 3(a)(1) and 3(a)(8) of the Texas Open Records Act. As you can see from the attached records, this case is not an ordinary assault, but rather is a family violence case involving the assault by one family member upon another.

Section 3(a)(1) exempts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Further, in ORD No. 409, you held that "Information may be withheld under section 3(a)(1) on the basis of common law privacy if (1) it is highly intimate or embarrassing, (2) its release would be highly objectionable to a person of ordinary sensibilities, and (3) there is no legitimate public interest in its disclosure." In ORD No. 409 (1984), you held that the names of burglary victims are not exempted from disclosure, but reaffirmed your decisions that the names of sexual assault victims are exempt.

We submit that the name of the complainant and releasing the details of a family violence assault to the person arrested under the assault is very similar to the situation of the sexual assault victim, and is entirely different from the burglary victim. In ORD No. 409, the name of the burglary victim was releasable in part, because "the physical integrity of one's home is [not] automatically on a level with the physical integrity of one's body, such that the mere disclosure of its violation might always be characterized as 'highly intimate or embarrassing'."

Both the family violence assault victim and the sexual assault victim have suffered physical assaults to their bodies, and it is likely that both could or would be embarrassed to have the world know who did it or that they were assaulted. As a result, the release of the specific details which were provided in this case, would be highly intimate or embarrassing. We further believe that it would be contrary to the public interest to release the information in these types of cases, as doing so would discourage victims of family violence from reporting it, if they thought their reports and statements would be available to the public or their assailant.

Similarly, we submit that this report should be exempt from disclosure under Section 3(a)(8). That section exempts:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

In ORD No. 366 (1983), you affirmed the basic conclusions of Houston Chronicle Publishing Company v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex 1976), that records can be exempt in "circumstances where the release of particular information would 'unduly interfere with law enforcement or crime prevention'." This exemption has been further extended to allow for the exemption of records when there is reason to believe that the release of the records may result in retaliation against the reporter.

We submit that in the case of family violence records, where a report has been made such as the attached one including the violence and threats made by the assailant, along with a statement by the complainant, resulting in the arrest of the assailant, that the threat of retaliation upon the assailant's finding out exactly what the complainant said is a very real concern and possibility. Therefore, these records should be exempt under Sec. 3(a)(8) on this basis.

We would further show that the release of these records under these circumstances would "unduly interfere with law enforcement or crime prevention." If the victims of family violence knew that their reports and statements were open to their assailants, they would be significantly discouraged from reporting such incidents. If the victims are in fear of retaliation, and are unwilling to report incidents, then the ability of a Police Department to enforce the law and work toward reducing family violence is severely hampered. Further, if the

release of the details and the complainant's statement angers the assailant into committing further violence, then the opposite of the Department's interest in crime prevention has occurred. We further submit that this is contrary to the Legislative Statement in Art 5.01(b) of the Texas Code of Criminal Procedure which states

In any law enforcement, prosecutorial, or judicial response to allegations of family violence, the responding law enforcement or judicial officers shall protect the victim, without regard to the relationship between the alleged offender and victim.

We would submit that because of the relationships involved pertaining to this request that all of the records should be exempt from disclosure. Merely blotting out the complainant's name to protect her identity would be insufficient, because of the identity of the requestor. In the event that you deem that some of this information should be disclosed, then we submit that only the information on the initial complaint report should be releasable. We believe that the exemptions explained above should exclude the complainant's statement even if some of the basic facts and details must be released, as her statement is the most likely record to incite any retaliation.

We further submit that the holding of Houston Chronicle, supra, would allow us to remove the fingerprints and other identifying numbers off the of the El Paso County Detention Facility, Arrest/Suspect Supplement, in the event that you determine that this report is releasable. Lastly, we submit that the record titled "Family Violence Report" should be exempt under Sec.3(a)(7) and 3(a)(11). This is the report which is required by Art 5.05 of the Texas Code of Criminal Procedure to be filled out and sent to the County or District Attorney's Office. Therefore, we submit that this report is either exempted by the provisions relating to Attorney-Client privilege or as an inter-agency memorandum which would not be available by law to a party other than one in litigation.

If you have any questions, or would like further information regarding this request, please let me know. Thank you for your time and assistance with this request.

Very truly yours,

Elaine H. Piper

Elaine H. Piper
Assistant City Attorney
Police Legal Advisor

Enclosures

cc: ID&R; 4.2; OPENREC2.AG